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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,058	11/04/2003	Holger Sedlak	P2001,0325	5559
24131	7590	12/06/2006		EXAMINER
LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480			PARRIES, DRU M	
			ART UNIT	PAPER NUMBER
			2836	

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/701,058	SEDLAK ET AL.	
	Examiner Dru M. Parries	Art Unit 2836	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 September 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3,4,6,7 and 9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,3,4,6,7 and 9 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7-3-06.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application
6) Other: ____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed September 27, 2006 have been fully considered but they are not persuasive. Regarding the argument that the Applicant's invention differs from Durham because of the limitation "at any time" (i.e. always operating at the maximum value), the Examiner disagrees with the Applicant's assessment. Based on the way the Applicant is interpreting the limitation, the Applicant doesn't teach that limitation either. For example, both inventions teach measuring the instantaneous current and then *reacting* after it is detected that a threshold is exceeded. *What the Applicant is then arguing is the amount of time it takes (i.e. the method) to change the clock frequency to the maximum possible frequency, and that is not claimed.* Another example, at the instant when the current is detected to be exceeding the threshold value, *at that instant in time* the circuit is not operating at its permissible maximum current consumption, it's operating above its permissible value, therefore the Applicant can not argue that his invention *always* operates at the permissible maximum value.

Based on how the Applicant's invention works, as described in the specification, the phrase "at any time" in the claims is interpreted to mean, "at any time after the current is detected and then increased/decreased by a change in the clock frequency". The Examiner believes that Durham and Wang teach everything that is claimed in claims 1, 4, and 7 as interpreted in terms of the Applicant's specification. However, the Examiner would like to point out to the Applicant that a difference in his invention as compared to the Durham and Wang combination is the method used to filter out the clock pulses once the current is determined to

have exceeded the threshold value. However, these differences are not clearly stated in the claims.

2. In response to applicant's argument that Wang is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Wang teaches a solution to a particular problem with which the applicant was concerned. The Examiner would like to point out that the USPTO considers a problem to be the difference between the main (base) reference and the claim (i.e. measuring the current instantaneously) and Wang solves that problem.

Consider *Medtronic, Inc. v. Cardiac Pacemakers*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983). Also, the motivation to combine the references is so that Durham can have instantaneous monitoring of the current and therefore can react more quickly to the over/under current issues that come up in the invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3, 4, 6, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durham et al. (5,761,517) and Wang (5,943,203). Durham teaches a current measuring device (18), a controllable clock supply circuit (27, 19, 1-7, 10-13, 20) having an output with clock pulses to be connected to a clock input of the circuit configuration (20, system_clock) and a clock generator (27). He also teaches a control device (21 & 14-17) connected to said clock supply circuit and driving the clock based upon the measured current consumption. He also teaches the control device programmed to filter out individual clock pulses of the clock supply circuit for reducing a clock frequency at said output of said clock circuit when a high power condition is detected. It is inherent to detect if such a condition exists, to have a definable threshold value and to see if the measured value exceeds it. (Abstract; Col. 1, lines 53-59; Col. 6, lines 24-52) Durham fails to explicitly teach the sensor being instantaneous and how the sensor (18) determines that a high power condition exists. Wang teaches a current being measured by an instantaneous current sensor and then compared with a threshold value by a comparator to determine if an over-current state has occurred (Col. 4, lines 14-19). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Wang's method of determining over-current into Durham's invention since Durham doesn't teach how it is determined and Wang teaches a method known in the art. It also would have been obvious to one of ordinary skill in the art at the time of the invention to use an

instantaneous current sensor in Durham's invention to allow for more accurate measurements of the current and more precise control of the clock's frequency.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dru M. Parries whose telephone number is (571) 272-8542. The examiner can normally be reached on Monday - Thursday from 9:00am to 6:00pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus, can be reached on 571-272-2800 x 36. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMP

11-27-2006



**CHAU N. NGUYEN
PRIMARY EXAMINER**